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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,172	10/30/2003	Janice H. Nickel	10014331-1	8166

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HEWLETT-PACKARD COMPANY  
Intellectual Property Administration  
P.O. Box 272400  
Fort Collins, CO 80527-2400

EXAMINER
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WILLE, DOUGLAS A

ART UNIT	PAPER NUMBER
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2814

DATE MAILED: 05/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/697,172

Applicant(s)

NICKEL ET AL.

Examiner

Douglas A Wille

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-15, 17, 19, 20 and 22 is/are rejected.
- 7) ☐ Claim(s) 16, 18 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 13, 15, 17 and 19-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1, 5, 6 and 8 of U.S. Patent No. 6,590,806 in view of Zhu. The same device is claimed in both the present Application and the patent except for the cross point connection. The patent does not show a cross point connection to the memory devices but the device obviously need external connection and Zhu shows that a cross point connection for such a device provides the necessary operating condition and its use would be obvious.

3. For claim 13 - 15, see claim 1 of the patent, note the equality of "sense" and "data" and note that the separation layers are equivalent to tunnel claim 3, see claim 1 of the patent.

4. For claim 17, see claim 5 of the patent and note that different coercivities imply nested loops.

5. For claim 19, see claim 8 of the patent.

6. With respect to claim 20, see claim 10 of the patent.

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7. For claim 21, see claim 5 of the patent and note that it would be obvious to change the coercivity by changing the material.

8. For claim 22, see claim 5 of the patent and note that the number of states is inherent in the structure.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

10. Claims 13 – 15, 17, 19, 20 and 22 are rejected under 35 U.S.C. 102(a) as being anticipated by Zhu.

11. With respect to claim 13, Zhu shows (see cover Figure and column 2, line 32 et seq.) a magnetic memory cell with two magneto-resistive devices in series which have sense layers 422 and 432 and have different coercivities in view of the different thickness (column 2, line 63) and the devices are tunnel junctions (column 2, line 50).

12. With respect to claim 14, the Zhu device has pinned layers 111, 121 and free layers 112, 122.

13. With respect to claim 15, the two cells are separated by non-magnetic layer 13 and the sense layers are back to back.

14. With respect to claim 17, the loops are inherently nested.

15. With respect to claim 19, see Figure 4 where the devices have different sizes.

16. With respect to claim 20, 122 and 112 are different thicknesses (column 2, line 57).

17. With respect to claim 22, the Zhu device has four states (column 2, line 3), distinguished by resistance (see also figure 2 and column 3, line 13 et seq.).

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***Allowable Subject Matter***

18. Claims 16, 18 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Zhu does not show a shared pinned layer, different shapes and different materials.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas A Wille whose telephone number is (571) 272-1721. The examiner can normally be reached on M-F (6:15-2:45).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wael Fahmy can be reached on (571) 272-1705. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Douglas A. Wille  
Primary Examiner